IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12150 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANIKANT PRABHUDAS ASHRA

Versus

BHARATKUMAR PRITAMAL @ BABULAL DUBAL

Appearance:

MR SANDEEP N BHATT for the Petitioner

MR PRAVIN GONDALIYA for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 28/04/2004

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today. Learned advocate Mr.Gondaliya waives service of rule.

The petitioner, plaintiff in Regular Civil Suit No.162/2001 pending before the learned Civil Judge

(S.D.), Rajkot, challenges the order dated 16th March, 2002 made by the learned Joint Civil Judge (S.D.), Rajkot below application Ex.38 in the aforesaid Civil Suit No.162/2001.

The matter at dispute is a property situated at Rajkot. The petitioner has claimed exclusive title over the suit property and has prayed for permanent injunction against the defendant from interfering with the possession of the plaintiff of the suit property. The plaintiff, however, did not disclose in the plaint the nature of his title or the source of his title. By application Ex.38 the plaintiff sought amendment of the plaint to the effect that the suit property was received by him from one Hemkunvarben through her Will executed on 28th November, 1988. The said application for amendment has been rejected by the impugned order.

The learned Civil Judge has, by impugned order, held that the proposed amendment shall change the nature of the suit and the question of genuineness of the Will shall also arise. It is observed that the plaintiff had deliberately suppressed the factum of Will by which he has claimed the title. The plaintiff also suppressed the relationship between the plaintiff and the defendant.

Learned advocate Mr.Gondaliya has appeared for the respondent and has contested the petition. He has supported the impugned order. In the submission of Mr.Gondaliya the aforesaid Will was suppressed from the Court by the plaintiff with a view to obtaining interim injunction pending the suit.

I am unable to agree with Mr.Gondaliya. I am of the view that the impugned order is erroneous. The application Ex.38 has been rejected by the learned Civil Judge on irrelevant consideration. As it transpires from the record, the suit has been instituted on 9th February, 2001. Along with the suit, the plaintiff did produce the aforesaid Will dated 28th November, 1988. However, he did not make averment as to the source of the title claimed by him. The aforesaid application Ex.38 was made on 14th March, 2001. Neither the plaintiff stood to gain by keeping back such pleading nor the proposed amendment shall change the nature of the suit. The suit shall still remain one for declaration of title and permanent injunction. I am, therefore, of the view that the application Ex.38 for amendment of the plaint was required to be granted.

In view of the above discussion the petition is

allowed. The impugned order dated 16th March, 2002 made by the learned Joint Civil Judge (S.D.), Rajkot below application Ex.38 in Regular Civil Suit No.162/2001 is quashed and set aside. The application Ex.38 stands allowed. The amendment shall be carried out within fifteen days from today. Rule is made absolute. The parties shall bear their own costs. The sum of Rs.3,000=00 deposited in this Court shall be remitted to the petitioner herein.

Registry shall send the writ forthwith.

(Ms. R.M.Doshit, J.)

/sakkaf